IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.9 of 1995
Date of decision: 5.9.2006

The Commissioner of Income Tax, Patiala

...Petitioner

v.

M/s Hind Woollen & Hosiery Mills, Ludhiana

Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following questions of law have been referred for opinion of this court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 30.9.1993, in respect of assessment year 1983-84:-

> "(i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of the CIT(A) directing to allow double shift allowance on the additions of machinery during the year to the extent of Rs.33,48,227/- on the concern as a whole worked double shift during the year instead of on each machinery which worked double shift?
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> ii) Whether on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of

> CIT(A) that two interest could not be charged under section 215 and 217 (1A) simultaneously?"

The assessee claimed double shift allowance on the additions of machinery to the extent of Rs.33,48,227/-. The Assessing Officer negatived the claim but the CIT(A) reversed the said view and held that there was evidence that the concern as a whole worked for double shift throughout the year. The Tribunal upheld the said view, in the light of the Board's benevolent ciruclar No.F.10/83/63-ITA(II) dated 28.9.1970 and also in view of the Kerala High Court decision in **CIT v. Punalar Paper Mills Limited** (170 ITR 37) and Tribunal decision in **IAC v. Lakshmi Machine Works Limited** (24 ITD 511). The Tribunal rejected the contention of the revenue that extra shift allowance was allowable only in respect of machinery which worked extra shift and not in respect of concern working as a whole.

The assessing officer charged interest under section 215 as well as 217 (1A) of the Income Tax Act, 1961 (for short, 'the Act') which view was disapproved by the CIT(A) in the light of Board's instruction No.951 dated 28.4.1976. The Tribunal upheld the view of CIT(A).

As regards the first question, we are of the view that the same has to be answered in favour of the assessee and against the revenue in view of judgment of the Hon'ble Supreme Court in **South India Viscose Ltd. v. Commissioner of Income-Tax** (1997) 227 ITR 286, wherein it was observed at page 300:-

> "For the reasons aforementioned, it must be held that extra shift allowance had to be calculated on the basis of number of days during which the concern had actually worked double shift or triple shift and the said allowance was not required to be calculated on the basis of the number of days a particular item of machinery or plant had worked double shift or triple shift. We are, therefore, unable to uphold the impugned judgment of the High Court in this regard. In our opinion, the Tribunal had rightly held that the extra shift allowance had to be calculated on the basis of the number of days on which the concern worked as a whole double shift or

> triple shift and not on the basis of each item of machinery being used in double shift or triple shift. Question No.4 must, therefore, be answered in the affirmative, i.e., in favour of the assessee and against the Revenue."

The said judgment was also followed in **Sundaram Spinning Mills v. Commissioner of Income Tax,** (1997) 227 ITR 301.

Second question is also to be answered in favour of the assessee and against the revenue. Finding of the CIT(A) on that issue may also be noticed:-

> "12.1. Then again, an interest of Rs.1,86,006/- has been charged u/s 215 of the I.T. Act, and similar amount of interest has been charged u/s 217(1A) of the IT Act. Legally, to types of interests one u/s 215 and another u/s 217(1A) cannot be charged for the same default. Only one interest of the two can be charged. Then on merits it is prayed that in fact no interest was chargeable u/s 215/217(1A) in view of the following submissions:-
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> > Estimate of income was filed in this case and advance tax of Rs.1,14,000/- was paid in there instalments. The return was filed declaring income of Rs.77,302/-, the tax worked out to Rs.43,700/- only. As such a refund of Rs.70300/- was due to the appellant. The estimate of income filed by the appellant was bonafide after taking into consideration the sum of Rs.4,58,236/- which was earned on the sale of import entitlements and considered to be exempt from tax in view of the CIT(A) order in the case of Indo Asian Switchgears Pvt. Ltd. and also ultimately held to be exempt in appellant's own case by the CIT(A). If this is excluded and also if proper allowance for double shift is allowed in this case, then there

would be no default to call for the leavy of interest u/s 215/217(1A) of the IT Act. The difference his only because of non-allowance of depreciation and assessability of profit earned on import entitlements.

12.2. I have examined the submissiuons of the appellant and that so far as the charging of interest u/s 139(8) is considered the contention raises before me is not tenable. The provisions law have rightly been invoked. The quantum of interest u/s 139(8) would, however, be reduced in the light of this appellant order and the appellant will get consequential relief.

12.3. Coming to the interest charged u/s 215/217 simultaneously, I agree with the submissions made before me that interest can not be charged u/s 215/217. It cannot be charged both the sections simultaneously in view of Board's instructions No.951-CBDT F.No.400/30/75-ITCC, dated 28.4.76. In view there of the interest charged u/s 217(1A) is hereby cancelled. Regarding charging of interest u/s 215 the plea of the appellant has been examined in detail. It is seen that the advance tax estimate was filed on 19.4.82. In the meantime, the appellant was in appeal before my predecessor in the asstt year 1979-80 with regard to the additions of income from import entitlements of Rs.9,81,496/-. My predecessor disposed of the appeal vide order dated 15.3.83. The estimate was to be revised, if at all, before the 15.3.83. No doubt the relief was allowed to the appellant but the order was not available to form a bonafide belief that the income to the extent of Rs.4,58,236/- will not constitute a part of the income for the purpose of advance tax Provisions of law have rightly been invoked. Since considerable relief has been allowed, to the appellant, the quantum of interest would also be reduced in the light of this appellate order.

On the said question, the Tribunal observed as under:-

> 14. Grounds Nos.9 and 10 are against the direction of the first appellate authority that interest both under sections 215 and 217(1A) cannot be simultaneously charged. For this proposition, the learned CIT(A) relied on the Board's instruction No.951 dated 28.4.1976. She accordingly, cancelled the interest charged u/s 217(1A). As regards, interest u/s 215, the learned CIT(A) only granted consequential relief in respect of the same on the basis of income as determined by her.
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> 15. The learned D.R. Submitted that interest had been charged under section 215 and 217(1A) for two distinct defaults.
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> 16. The learned counsel for the assessee, on the other hand, relied upon the Tribunal's decision in Oriental Scientific Dyers Vs. ITO (1988) 74, CTR (Trib Orders) 8. Reliance was also placed on the Tribunal's decision in Kesar Singh Vs ITO (1988) 32, TTJ (Chd) 415 in which it could not be charged simultaneously.
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> 17. After careful consideration of the rival submissions, we hold that two types of interests could not be charged. The learned counsel for the assessee has relied on two decisions of the Tribunal which also support the above view. In view of the said decisions, we hold that the learned CIT(A) was justified in holding that two interests could not be charged simultaneously. We also do not find any merit in the ground that no appeal lay against the charging of interest u/s 215/217/139(8).”

Relevant provisions of Sections 215 and 271(1A) of the Act are

extracted below:-

"**215. (1)** Where, in any financial year, an assessee has paid [advance tax under section 209A or section 212 on the basis of his own estimate (including revised estimate)], and the advance tax so paid is less than seventy five per cent of the assessed tax, simple interest at the rate of [twelve] per cent per annum from the 1st day of April next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax:]

[**Provided** that in the case of an assessee, being a company, the provisions of this sub-section shall have effect as if for the words "seventy-five per cent", the words "eighty-three and one-third per cent" had been substituted.]

[(2) Where before the date of completion of a regular assessment, tax is paid by the assessee under section 140A or otherwise,-

(i) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax is so paid; and

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax as so paid (in so far as it relates to income subject to advance tax) falls short of the assessed tax.]

(3) Where as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(4) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or

waive the interest payable by the assessee under this section.

(5) In this section and sections 217 and 273, "assessed tax" means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of sections 192 to 194, section 194A [section 194C] [section 194D] and section 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made.]

**"271A.** Without prejudice to the provisions of section 271, if any person, without reasonable cause, fails to keep and maintain any such books of account and other documents as required by section 44AA or the rules made thereunder, in respect of any previous year or to retain such books of account and other documents for the period specified in the said rules, the Income-tax Officer or the Appellate Assistant Commissioner [or the Commissioner (Appeals)] may direct that such person shall pay, by way of penalty, a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income."

From a perusal of the sections, it is evident that both operate in their respective fields. Interest under both the sections is leviable under certain specified situations, whereas liability to pay interest under section 215 of the Act arises if advance tax paid was less than 75% of the assessed tax, while liability to pay interest under section 217(1A) of the Act arises for not sending estimate under section 209A(4) or under section 212(3A) of the Act.

View taken by the Tribunal is fully supported by the scheme of

the Act as well as instructions of the Board.

Question is accordingly answered against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

September 5, 2006
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(Rajesh Bindal)
Judge